

Thomas C. Wenzel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
IN ADMIRALTY

- - -

TIFFANY N. PROVENCE, as the	:
Personal Representative of the	:
Estate of Juan Antonia	:
Villalobos Hernandez,	:
	:
Plaintiff,	:
	:
vs.	: Case No.
	: 2:21-cv-965-RMG
	:
UNITED STATES OF AMERICA,	:
CROWLEY MARITIME CORPORATION,	:
CROWLEY GOVERNMENT SERVICES,	:
INC., DETYENS SHIPYARDS, INC.,	:
and HIGHTRAK STAFFING, INC,	:
d/b/a Hitrak Staffing, Inc.,	:
	:
Defendants.	:
	:

DEPOSITION OF THOMAS C. WENZEL

DATE TAKEN: Tuesday, May 3, 2022

TIME BEGAN: 10:00 a.m.

TIME ENDED: 11:15 a.m.

LOCATION: REMOTE PARTICIPATION DEPOSITION
(All parties participated via videoconference)

REPORTED BY: Mary Posey, Court Reporter
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1 know, how it applies to the case it's a little hard
2 to say given that we really don't know, you know,
3 exactly what was happening in terms of welding on the
4 ship that may have pertained to the subject.

5 Q Okay. Well, that makes it easy.

6 The report that you generated in this case
7 is dated March 4, 2022. Does that contain all of
8 your opinions in this case?

9 A Yes, sir.

10 Q Okay. So what I've -- and I'm not trying
11 to belittle your effort here in the case but when I
12 look at your expert report, it appears to be -- could
13 be summarized by saying you agree with the conclusion
14 of the investigation conducted by the United States
15 Coast Guard? Or, excuse me, by OSHA.

16 A I would say that I'm generally in agreement
17 with OSHA, yes.

18 Q Okay. Is there any aspect of the OSHA
19 investigation specifically related to the failure of
20 the wire rope that you disagree with?

21 A No. I don't recall any sitting here. I'm
22 always careful to answer that question -- I mean, I
23 can walk back through it if you want me to but I
24 don't specifically recall any, you know, specific
25 differences I had with them.

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1 to the davit arm, it's a little bit hard to see how
2 you're going to get current flow through the davit
3 arm. Now, I'm not on that ship all of the time to
4 see exactly what's going on so I hate to rule it out
5 as a possibility, but it would seem more likely that
6 that welding would have to be taking place on the
7 davit arm or certainly in the vicinity of the davit
8 arm to generate the type of damage we see on the wire
9 rope.

10 Q Okay. And then I guess the other possible
11 explanation would be something like a lightning
12 strike.

13 A A lightning strike might have the potential
14 to do that too, yes.

15 Q All right. Is there any way to rule in or
16 rule out a lightning strike?

17 A I don't think you can rule it out, no.

18 Q So are there any other options in terms of
19 the origin for the thermal event that you can think
20 of?

21 A As I sit here right now, I can't think of
22 any. It's possible there are other ones but those
23 probably cover the main categories.

24 Q All right. And in terms of the origin of
25 the thermal damage, are you able to opine to a

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1 don't know if OSHA has been deposed and has done
2 everything. You know, based upon the fact that we
3 have an in-house investigator who has access to all
4 of the information concluding that -- you know,
5 clearly I believe he had access to all of the OSHA
6 information and he still concluded that Mr. Hernandez
7 was not welding. You know, I don't know if OSHA had
8 access to all of Mr. Marshall's information or not
9 but it seems to me like the information provided by
10 Mr. Marshall was after everything was taken into
11 consideration, even including the OSHA report, so
12 that's why I would tend to give it more weight than
13 ultimately what OSHA says in their report.

14 Q Understood, and fair enough. But you're
15 making assumptions about the information OSHA had and
16 did not have so all I want to ask you is, can you say
17 with a reasonable degree of engineering certainty
18 that Mr. Hernandez was not welding that morning?

19 A I can't rule out the possibility and, you
20 know, as I stated in my report, it's based upon what
21 Mr. Marshall said after he has had a chance to review
22 all of his information.

23 Q Okay.

24 A And if there is more information that comes
25 out and suggests he actually is welding, then I

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1 certainly would, you know, consider that. But as of
2 right now, based on the information I have, you know,
3 I believe it's most likely that he was not welding.
4 And, otherwise, Mr. Marshall, who, again, has had the
5 opportunity to review all of this information, would
6 not be saying something that's not accurate so...

7 Q All right. And do you agree that welding
8 on the davit arm at any time without the
9 return-electrode clamp affixed to the davit arm could
10 allow an electrical current to travel up the davit
11 arm and through the wire rope or string?

12 A Yes. It has the potential to do that.

13 Q Okay. I just want to rule out some other
14 possible causes of failure.

15 You did not see any evidence of corrosion
16 causing failure of the wire rope?

17 A Correct.

18 Q Okay. You did not see any evidence of
19 shearing by any implement causing the wire rope to
20 part?

21 A No evidence of sharing.

22 Q Okay. You did not see evidence within any
23 reasonable degree of engineering certainty of direct
24 flame parting of the wire rope?

25 A Again, I don't know if I can rule out that

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1 possibility. I think we had discussed that earlier
2 in my deposition and, you know, while it may be lower
3 on the list of possibilities, I don't know if I can
4 rule that out. You might have to go back and do a
5 lot of testing to try to rule that out as a
6 possibility.

7 Q Right. But I think what you've testified
8 to was the most likely cause was electrical current
9 and, more likely than not, welding on the davit arm
10 at some point.

11 A No. That's not correct.

12 Q Okay.

13 A If you've seen my report, I call it thermal
14 damage. I would say of the possibilities that an
15 electrical arc from welding is probably one of the
16 better ones but I don't think I'm going to go to the
17 point that's saying it's the most likely -- well,
18 it's more likely than not that that was what was the
19 cause because, again, I don't have anything that
20 tells me for certain exactly what caused that damage
21 at this point in time.

22 Q Okay. Based on what you've seen and
23 evaluated, would you say that electric current from
24 welding is more likely than someone holding a flame
25 torch directly to the wire?

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1 A Again, short of going and doing that
2 testing -- you know -- put it this way. Let me try
3 to -- if I -- given what I know, you know, in looking
4 at the possibilities, I would say the electrical arc
5 is the best possibility at this point in time.

6 Q Okay.

7 A But I'm not willing to go to the extent to
8 say that it is the most likely reason why that has
9 failed but I just don't have enough information to
10 tell me -- to really come to that conclusion that it
11 was an electrical arc or it is most likely an
12 electrical arc. But of the possibilities, I would
13 say that one is the one that's probably the highest
14 on the list.

15 Q Okay. You did not find evidence that the
16 wire was failed because of tensile strength and
17 overload alone.

18 A Correct.

19 Q Okay.

20 A Right. We definitely have a thermal event
21 that has melted individual wires, they're
22 resolidified on the free end, and we definitely have
23 thermal damage there that ultimately compromised the
24 strength of the wire rope. Now, like we talked about
25 before, there were some individual wires in there